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1ST SESSION

S. 1700

To require certain issuers to disclose payments to foreign governments for the commercial development of oil, natural gas, and minerals, to express the sense of Congress that the President should disclose any payment relating to the commercial development of oil, natural gas, and minerals on Federal land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 2009

Mr. LUGAR (for himself, Mr. CARDIN, Mr. SCHUMER, Mr. WICKER, Mr. FEINGOLD, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require certain issuers to disclose payments to foreign governments for the commercial development of oil, natural gas, and minerals, to express the sense of Congress that the President should disclose any payment relating to the commercial development of oil, natural gas, and minerals on Federal land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Energy Security
5 Through Transparency Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) It is in the interest of the United States to
4 promote good governance in the extractive industries
5 sector because good governance strengthens the na-
6 tional security and foreign policy of the United
7 States, contributes to a better investment climate for
8 businesses in the United States, increases the reli-
9 ability of commodity supplies upon which businesses
10 and people in the United States rely, and promotes
11 greater energy security.

12 (2) Developing countries that derive a signifi-
13 cant portion of revenues from natural resource ex-
14 traction tend to have higher poverty rates, weaker
15 governance, higher rates of conflict, and poorer de-
16 velopment records than countries that do not rely on
17 resource revenues. The consequences of what is
18 known as the “resource curse” including the erosion
19 of civil society, a rise in internal conflicts and re-
20 gional violence, and the proliferation of terrorism are
21 likely to pose a long-term threat to the national se-
22 curity, foreign policy, and economic interests of the
23 United States.

24 (3) Transparency in revenue payments to gov-
25 ernments enables citizens to hold their leaders more
26 accountable.

1 (4) There is a growing consensus among oil,
2 gas, and mining companies that transparency in rev-
3 enue payments is good for business, since it im-
4 proves the business climate in which they work and
5 fosters good governance and accountability.

6 (5) Transparency in revenue payments benefits
7 shareholders of corporations that make such pay-
8 ments because such shareholders have a desire to
9 know the amount of such payments in order to as-
10 sess financial risk, compare payments from country
11 to country, and assess whether such payments help
12 to create a more stable investment climate. Undis-
13 closed payments may be perceived as corrupt and as
14 decreasing the value of the corporation.

15 **SEC. 3. SENSE OF CONGRESS RELATING TO TRANS-**
16 **PARENCY FOR EXTRACTIVE INDUSTRIES.**

17 It is the sense of Congress that—

18 (1) the President should work with foreign gov-
19 ernments, including members of the Group of 8 and
20 the Group of 20, to establish domestic requirements
21 that companies under the jurisdiction of each gov-
22 ernment publicly disclose any payments made to a
23 government relating to the commercial development
24 of oil, natural gas, and minerals; and

1 (2) the United States Government should com-
2 mit to global leadership of transparency in extractive
3 industries by supporting—

4 (A) multilateral pro-transparency efforts,
5 such as the Extractive Industries Transparency
6 Initiative, in revenue collection, budgeting, ex-
7 penditure, and wealth management;

8 (B) bilateral efforts to promote good gov-
9 ernance in the extractive industries through
10 United States missions and activities abroad;

11 (C) the implementation of extractive indus-
12 tries reporting requirements for companies
13 under the jurisdiction of the United States
14 similar to the requirements established under
15 section 6 of this Act; and

16 (D) efforts to persuade other members of
17 the Organization for Economic Cooperation and
18 Development and Asia-Pacific Economic Co-
19 operation to adopt uniform legislation to ensure
20 a coordinated regulatory approach.

21 **SEC. 4. SENSE OF CONGRESS RELATING TO THE EXTRAC-**
22 **TIVE INDUSTRY TRANSPARENCY INITIATIVE.**

23 It is the sense of Congress that the President should
24 commit the United States to become a Candidate Country
25 of the Extractive Industry Transparency Initiative.

1 **SEC. 5. DISCLOSURE OF PAYMENTS TO THE UNITED**
 2 **STATES.**

3 The Secretary of the Interior shall disclose to the
 4 public any payment (as that term is defined in section
 5 13(m) of the Securities Exchange Act of 1934 (15 U.S.C.
 6 78m(m)), as added by section 6 of this Act) relating to
 7 the commercial development of oil, natural gas, and min-
 8 erals on Federal land made by any person to the Federal
 9 Government.

10 **SEC. 6. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRAC-**
 11 **TION ISSUERS.**

12 Section 13 of the Securities Exchange Act of 1934
 13 (15 U.S.C. 78m) is amended by adding at the end the
 14 following:

15 “(m) DISCLOSURE OF PAYMENT BY RESOURCE EX-
 16 TRACTION ISSUERS.—

17 “(1) DEFINITIONS.—In this subsection—

18 “(A) the term ‘commercial development of
 19 oil, natural gas, or minerals’ includes the acqui-
 20 sition of a license, exploration, extraction, proc-
 21 essing, export, and other significant actions re-
 22 lating to oil, natural gas, or minerals, as deter-
 23 mined by the Commission;

24 “(B) the term ‘foreign government’ means
 25 a foreign government, an officer or employee of
 26 a foreign government, an agent of a foreign

government, a company owned by a foreign government, or a person who will provide a personal benefit to an officer of a government if that person receives a payment, as determined by the Commission;

“(C) the term ‘payment’—

“(i) means a payment that is—

“(I) made to further the commercial development of oil, natural gas, or minerals; and

“(II) not de minimis; and

“(ii) includes taxes, royalties, fees, licenses, production entitlements, bonuses, and other material benefits, as determined by the Commission; and

“(D) the term ‘resource extraction issuer’ means an issuer that—

“(i) is required to file an annual report with the Commission; and

“(ii) engages in the commercial development of oil, natural gas, or minerals.

“(2) DISCLOSURE.—

“(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Energy Security Through Transparency Act

1 of 2009, the Commission shall issue final rules
2 that require each resource extraction issuer to
3 include in the annual report of the resource ex-
4 traction issuer information relating to any pay-
5 ment made by the resource extraction issuer, a
6 subsidiary or partner of the resource extraction
7 issuer, or an entity under the control of the re-
8 source extraction issuer to a foreign government
9 for the purpose of the commercial development
10 of oil, natural gas, or minerals, including—

11 “(i) the type and total amount of such
12 payments made for each project of the re-
13 source extraction issuer relating to the
14 commercial development of oil, natural gas,
15 or minerals; and

16 “(ii) the type and total amount of
17 such payments made to each foreign gov-
18 ernment.

19 “(B) INTERNATIONAL TRANSPARENCY EF-
20 FORTS.—To the extent practicable, the rules
21 issued under subparagraph (A) shall support
22 the commitment of the United States Govern-
23 ment to international transparency promotion
24 efforts relating to the commercial development
25 of oil, natural gas, or minerals.

“(C) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

“(3) PUBLIC AVAILABILITY OF INFORMATION.—

“(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

“(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

“(4) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.”.

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